



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

Docket Number USCG-2018-1057

RIN 1625-AA00

Safety Zone; Gastineau Channel, Juneau, AK

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to modify an existing safety zone for certain waters of the Gastineau Channel. This action is necessary to provide for safety of vessels anchoring on these navigable waters. This proposed rulemaking would prohibit vessels, other than large passenger vessels from anchoring within the safety zone without the express consent from the Captain of the Port, Southeast Alaska, or a designated representative. We invite your comments on this proposed rulemaking and are particularly interested in any potential impact to underwater cables in the Gastineau Channel affected by this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before April 6, 2019.

ADDRESSES: You may submit comments identified by docket

number USCG-2018-1057 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: LT Kristi Sloane, Sector Juneau, Waterways Management Division, U. S. Coast Guard, at telephone number 907-463-2846 or email to D17-SMB-Sector-Juneau-WWM@uscg.mil.

#### SUPPLEMENTARY INFORMATION:

##### I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

##### II. Background, Purpose, and Legal Basis

The Coast Guard recently conducted a Waterways Analysis and Management System (WAMS) study for the Gastineau Channel. The study identified a need to modify an existing safety zone for certain waters of the Gastineau Channel to improve safety of large passenger vessels anchoring within the safety zone. The Captain of the Port, Southeast Alaska, (COTP) has determined that modification of the existing safety zone is necessary to improve the

safety of large passenger vessels anchoring in the Gastineau Channel safety zone.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within the safety zone. The Coast Guard is proposing this rulemaking under authority in 33 U.S.C. 1231.

### III. Discussion of Proposed Rule

The COTP is proposing to amend 33 CFR 165.1702 by way of expanding the existing safety zone in order to improve safety of large passenger vessels anchoring in the Gastineau Channel. The proposed safety zone would extend the existing safety zone approximately 300 yards at the northernmost end of the safety zone. All vessels may transit or navigate within the safety zone. No vessels, other than large passenger vessels may anchor within the safety zone without the express consent from the Captain of the Port, Southeast Alaska or a designated representative. The regulatory text we are proposing appears at the end of this document.

### IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we

discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits.

Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on a premise that all vessels may transit or navigate within the proposed safety zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with

populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES section) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or

complain about this proposed rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has

implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone that allows all vessels to

transit or navigate within the safety zone but prohibits vessels, other than large passenger vessels from anchoring within the safety zone without the express consent from the Captain of the Port, Southeast Alaska or a designated representative. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01 We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for



alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <https://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS.

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 165.1702 to read as follows:

§ 165.1702 Gastineau Channel, Juneau, Alaska-safety zone.

(a) The waters within the following boundaries are a safety zone: All waters eastward to shore from a line beginning at Gastineau Channel Light 4 (LLNR 23695) in position 58°17.82' N., 134°25.36' W, in the direction of 130° True to Rock Dump Lighted Buoy 2A (LLNR 23685) at position 58°17.14' N., 134°23.84' W.

(b) *Definitions.* The following definitions apply to this section:

(1) *A large passenger vessel* for the purpose of this regulation are cruise ships and ferries.

(2) *Cruise ship* means any vessel over 100 gross registered tons, carrying more than 12 passengers for hire which makes voyages lasting 24 hours, of which any part is on high seas. Passengers from cruise ships are embarked or disembarked in the U.S. or its territories. Cruise ships do not include ferries that hold Coast Guard Certificates of Inspection endorsed for "Lakes, Bays, And Sounds", that transit international waters for only short periods of time on frequent schedules.

(3) *Ferry* means a vessel which is limited in its use to the carriage of deck passengers or vehicles or both, operates on a short run on a frequent schedule between two or more points over the most direct water route, other than in ocean or coastwise service.

(c) Special Regulations. (1) All vessels may transit or navigate within the safety zone.

(2) No vessels, other than a large passenger vessel may anchor within the safety zone without the express consent from the Captain of the Port, Southeast Alaska.

Dated: March 7, 2019.

STEPHEN R. WHITE

CAPT, U.S. Coast Guard,

Captain of the Port, Southeast Alaska.

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